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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/585,966	07/13/2006	Thorsten Cassier	3793	8881
7590 Striker Striker & Stenby 103 East Neck Road Huntington, NY 11743				
EXAMINER				
ELHELO, EISA B				
ART UNIT		PAPER NUMBER		
1796				
MAIL DATE		DELIVERY MODE		
10/30/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/585,966

**Applicant(s)**

CASSIER ET AL.

**Examiner**

Eisa B. Elhilo

**Art Unit**

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1,2 and 4-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1,2 and 4-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
- \_\_\_\_\_ Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)
- \_\_\_\_\_ Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

- 1 This action is responsive to the amendment filed on August 28, 2008.
- 2 The cancellation of claim 3 is acknowledged. Pending claims are 1-2 and 4-20.
- 3 Objection to claims 4,5,11,12 and 20 is withdrawn because of the applicant's amendment.
- 4 The rejection of claims 1,2,4,7-14,17-18 and 20 under 35 U.S.C. 102(b) as being anticipated by Dias (US' 791 B1) is withdrawn because of the applicant's amendment.
- 5 Claims 5 and 6 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Dias (US' 791 B1), for the reasons set forth in the previous office action that mailed on May 01, 2008.
- 6 Claims 15 and 16 stand rejected under 35 U.S.C. 103(a) as being unpatentable over Dias (US' 791 B1) in view of Legrand et al. (US' 944 A1), for the reasons set forth in the previous office action that mailed on May 01, 2008.

New ground of rejection

***Claim Objections***

- 7 Claims 4, 6-10 and 13-17 objected to because of the following informalities: Claims 4, 6-10 and 13-17 are dependent on a cancelled claim (claim 3). Appropriate correction is required.

***Claim Rejections - 35 USC § 102***

- 8 The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

***Claim Rejections - 35 USC § 103***

9 The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-2, 4, 7-14 and 17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by or, in alternative, under 103(a) as obvious over Dias (US 6,540,791 B1).

Dias (US' 791 B1) teaches a hair bleaching composition comprising hydrogen peroxide and bromate as oxidizing agents in the amounts of 0.1 to 6% which within the claimed amounts as claimed in claims 1, 4-5 and 7 (see col. 5, lines 25-46), ethylenediaminetetraacetic acid as peroxide stabilizer as claimed in claim 8 (see col. 8, lines 46-47), etidronic acid stabilizer in the amount of 0.1 % and 0.2% as claimed in claims 9 and 11 (see cols. 51-52, The tables), stabilizers of a combination of disodium pyrophosphate and etidronic acid as claimed in claim 10 (see col. 9, lines 17-18), thickener of acrylic copolymers in the amounts of 0.5 to 5% as claimed in claims 12-13 (see col. 15, lines 14-41), water in the amount of 50 to 98% as claimed in claim 14 (see col. 15, lines 1-19), cationic polymers as claimed in claim 17 (see col. 26, line 8) and amphoteric compound of laurylamidopropyldimethylcarboxymethyl betaine as claimed in claim 18 (see col. 13, lines 57-50). Dias (US' 791 B1) also teaches 2-component preparation as claimed in claim 20 (see col. 49, lines 1-12), wherein the composition is in the form of a gel as claimed in claim 2 (see col. 49, line 35). Dias teaches the same oxidative treatment comprising oxidant, peroxide stabilizers, polymer thickeners as claimed which inherently would have the same physical

properties including transparent and viscosity as claimed. Dias (US' 791 B1) teaches all the limitations of the instant claims. Hence, Dias anticipates the claims.

However, the claims in the alternative, under 35 U.S.C. 103(a) are obvious over Dias (US' 791 B1), because the reference teaches a hair bleaching composition having similar ingredients in the claimed amounts and wherein the composition is in a gel form as claimed, and, thus, the claimed composition and its properties are inseparable. Therefore, if the prior art teaches the identical chemical structure, the properties applicant discloses and/or claims are necessarily present. (see *In re Spada*, 911 F. 2d 705, 709, 15 USPQ2d 1655,1658 (Fed. Cir. 1990), and, thus, a person of the ordinary skill in the art would expect such a dyeing composition to have ingredients having similar physical properties as those claimed including transparency and viscosity properties, absent unexpected results.

***Response to Applicant's Arguments***

10 Applicant's arguments with respect to claims 1-2 and 4,7-14, 17-18 and 20 have been considered but are moot in view of the new ground(s) of rejection.

11 Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -4:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pyon Harold can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Eisa B Elhilo/  
Primary Examiner, Art Unit 1796  
October 27, 2008

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